

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Entravision Holdings, LLC,	)	CSC-389
Costa de Oro Television, Inc.,	)	CSC-390
Brunson Communications, Inc.,	)	CSR-5751-M
Channel Twenty Television Company, LLC,	)	CSR-5775-M
Maranatha Broadcasting Company, Inc.,	)	CSR-5842-M
Adell Broadcasting Corporation,	)	CSR-5854-M
LeSEA Broadcasting Corporation,	)	CSR-5855-M
Carolina Christian Broadcasting, Inc.,	)	CSR-5856-M
Christian Television Network, Inc., and	)	CSR-5857-M
Good Life Broadcasting, Inc.	)	CSR-5858-M
	)	CSR-5859-M
v.)	
)	
EchoStar Communications Corporation)	
)	
Requests for Mandatory Carriage)	
)	

MEMORANDUM ORDER AND OPINION

Adopted: April 12, 2002

Released: April 15, 2002

By the Deputy Chief, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. The ten above-captioned licensees (the “Petitioners”) of eleven different commercial television stations (collectively, the “Stations”)¹ each petitioned² the Commission to require EchoStar Communications Corporation (“EchoStar”) to carry the Stations’ signals on EchoStar’s satellite system in a non-discriminatory fashion, pursuant to Section 338 of the Communications Act of 1934, as amended (the “Act”), and Section 76.66 of the Commission’s rules.³ In light of the similar facts and issues

¹ The Stations are: WUNI, Worcester, MA; KJLA, Ventura, CA; WGTW, Burlington, NJ; KTMW, Salt Lake City, UT; WFMZ, Allentown, PA; WADL, Mt. Clemens, MI; WHMB, Indianapolis, IN; KWHD, Castle Rock, CO; WGGG, Greenville, SC; WHTN, Murfreesboro, TN; and WTGL, Orlando, FL.

² Entravision Holdings, LLC (“Entravision”) and Costa de Oro Television, Inc. (“Costa”) filed Petitions to Show Cause on behalf of WUNI and KJLA. The remaining Petitioners filed must carry complaints that are treated as Petitions for Special Relief under Section 76.7 of our rules. *See 1998 Biennial Regulatory Review: Part 76 – Cable Television Service Pleading and Complaint Rules*, 14 FCC Rcd 418 (1999).

³ 47 C.F.R. § 76.66. On December 7, 2001, the U.S. Court of Appeals for the Fourth Circuit unanimously upheld the constitutionality of Section 338 of the Act, and Section 76.66 of the Commission’s rules. *See SBCA v. FCC*, 275 F.3d 337, 350 (4th Cir. 2002). On March 7, 2002, EchoStar and the Satellite Broadcasting and Communications Association filed a petition for a writ of certiorari with the United States Supreme Court to review the judgment of the Fourth Circuit in the *SBCA v. FCC* case.

presented, we consolidate the Petitions for purposes of this action. The Stations indicate that EchoStar is providing “local-into-local” satellite service pursuant to the statutory copyright license in the applicable designated market area (“DMA”) where each station operates and that the Stations have elected must carry status for the 2002-06 election cycle.⁴ Petitioners allege that EchoStar has failed to meet its must carry obligations under the Commission’s satellite broadcast signal carriage rules by placing the Stations on facilities other than EchoStar’s main continental United States (“CONUS”) satellites. EchoStar carries most local stations, including local network affiliates, on its CONUS satellites, allowing these signals to be received through subscribers’ existing receive dishes. Even though they are in the same market as these affiliates, EchoStar carries the Petitioning Stations on its “wing” satellites. As a result, EchoStar subscribers who wish to receive the Stations must either obtain a second receive dish or a replacement one. The Stations ask that the Commission either order EchoStar to carry their signals from the same satellite location as other broadcast stations in their market, or otherwise require the nondiscriminatory carriage of the Stations. EchoStar filed an opposition to each Petition and the Stations filed replies.

II. DISCUSSION

2. In our recent *Declaratory Ruling and Order*, we found that EchoStar’s two-dish plan violates the carrier’s broadcast signal carriage requirements under the Satellite Home Viewer Improvement Act of 1999 (the “SHVIA”).⁵ Specifically, we held that EchoStar’s two-dish plan violates the prohibitions contained in Section 338(d) of the Act and Section 76.66(i) of the Commission’s rules against discrimination in price, channel positioning and on-screen program guide and menu treatment.⁶ For the reasons set forth in the *Declaratory Ruling*, we grant the Petitions filed in each of these eleven cases.

3. All of the Petitioners in this proceeding can be categorized in one of two groups. The first and largest group involves stations placed on “wing slot” satellites.⁷ In order for EchoStar subscribers to receive these stations, they must obtain a second receive dish. The grievances enumerated by the nine stations in this category virtually are identical to the practices that we found to violate the statute and the rules in the *Declaratory Ruling and Order*. The arguments made by EchoStar in its oppositions also echo its earlier arguments in the *Declaratory Ruling* proceeding.

4. The second group is comprised of two stations in the Philadelphia DMA that have been placed on a satellite at the 129^o orbital slot.⁸ In order for EchoStar subscribers to receive these stations,

⁴ See 17 U.S.C. § 122(a); 47 U.S.C. § 339. A satellite carrier provides “local-into-local” satellite service when it retransmits a local television signal back into the local market of that television station for reception by subscribers. 47 C.F.R. § 76.66(a)(6).

⁵ See *National Association of Broadcasters and Association of Local Television Stations, Request for Modification or Clarification of Broadcast Carriage Rules for Satellite Carriers*, DA 02-765 (rel. Apr. 4, 2002) (“*Declaratory Ruling*”).

⁶ *Id.* Some Petitioners, such as WGTW, contend that EchoStar’s relegation of some local stations to carriage on wing satellites from which signal reception is possible only by means of a second or replacement receive dish also violates Section 338(d)’s prohibition of discriminatory treatment with respect to signal availability on navigation devices. See, e.g., Motion to Resume Processing of Must Carry Petition and Amendment to Petition of Brunson Communications, Inc. at 10-11 (“WGTW Amended Complaint”); Reply of Brunson Communications, Inc. at 4 (“WGTW Reply”). They argue that because a satellite dish antenna is equipment used by consumers to access multichannel video programming, it can be said to function as a navigation device, particularly when considered in conjunction with the receiver, which must also be adjusted to accommodate those stations relegated to the second dish. We need not reach the question of whether a satellite dish used in this context is a navigational device, since we find that EchoStar has violated the nondiscrimination provision of Section 338(d) in other respects.

⁷ The stations in this group include WUNI, KJLA, KTMW, WADL, WHMB, KWHD, WGGS, WHTN and WTGL.

⁸ The stations in this group are WGTW and WFMZ.

they must obtain a larger replacement receive dish. Despite EchoStar's arguments to the contrary, we believe that this replacement offer implicates the same issues and concerns as the two-dish plan found unlawful in the *Declaratory Ruling*.

5. The *Declaratory Ruling* concluded that EchoStar must take action to remedy each of the instances of unlawful discrimination specified.⁹ As indicated therein, the actions outlined in the *Declaratory Ruling* are not the exclusive remedial actions to which EchoStar is confined, and we are not prejudging any particular package of remedial steps that EchoStar may take. Consistent with the *Declaratory Ruling*, EchoStar may take the steps outlined¹⁰ and/or other actions provided that it ends the unlawful discrimination. Accordingly, and consistent with that ruling, EchoStar is required to correct each type of unlawful discrimination with respect to each of these eleven stations and submit a Compliance Report and Plan describing the specific actions taken concerning each station within 30 days of the release of this Order.

III. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.66 of the Commission's rules, 47 C.F.R. §§ 76.66, that the petitions filed by Entravision Holdings, LLC, Costa de Oro Television, Inc., Brunson Communications, Inc., Channel Twenty Television Company, LLC, Maranatha Broadcasting Company, Inc., Adell Broadcasting Corporation, LeSEA Broadcasting Corporation, Carolina Christian Broadcasting, Inc., Christian Television Network, Inc., Good Life Broadcasting, Inc **ARE GRANTED** to the extent indicated herein.

7. **IT IS FURTHER ORDERED THAT** within 30 days after the release of this *Memorandum Opinion and Order*, EchoStar shall submit a Compliance Report and Plan with respect to each of these stations, describing the specific actions EchoStar is taking and plans to take to come into compliance with its carriage obligations for the Stations, as outlined in the *Declaratory Ruling and Order*, DA 02-765.

8. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules, 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Media Bureau

⁹ *Declaratory Ruling and Order* ¶¶ 29-37 (describing requirement to remedy all forms of discrimination found: discrimination in terms of price; discriminatory access to stations on the on-screen program guide and menu; and failure to offer stations on contiguous channels).

¹⁰ *See, e.g., id.* ¶ 32 (immediate and direct communication with any affected subscribers who need additional equipment, and automatically providing free second antenna to new subscribers); ¶ 33 (on-screen program guide and menu must present a complete list of all local channels in nondiscriminatory manner and subscriber's tuner must provide access to every local channel). *See also id.* ¶ 31 (consolidating all local stations in a market from the same satellite location would remedy need for additional equipment and, thereby, remedy unlawful discriminatory conduct).